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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 MARK NUNEZ, et al.,

4 Plaintiffs,

5 v.

11 CV 5845 (LTS)

6 CITY OF NEW YORK, et al.,

7 Defendants.

8 -----x

9 New York, N.Y.

10 July 9, 2015

11:00 a.m.

11 Before:

12 HON. LAURA TAYLOR SWAIN,

13 District Judge

14 APPEARANCES

15 LEGAL AID SOCIETY

Attorneys for Plaintiffs

16 BY: JONATHAN S. CHASAN

-and-

17 ROSE & GRAY

Attorneys for Plaintiffs

18 BY: CHRISTINA G. BUCCI

ANNA E. FRIEDBERG

19 PAUL KELLOGG

-and-

20 U.S. DEPARTMENT OF JUSTICE

Attorneys for Plaintiffs

21 BY: JEFFREY POWELL

LARA K. ESHKENAZI

22 -and-

EMERY CELLI BRINCKERHOFF & ABADY LLP

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23 BY: JONATHAN S. ABADY

24
25 (Appearances continued on next page)

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1 APPEARANCES (continued)

2 NEW YORK CITY LAW DEPARTMENT
Attorneys for Defendants

3 BY: ARTHUR G, LARKIN, III

CELESTE KOELEVELD

4 KIMBERLY JOYCE

KATHLEEN RUBENSTINE

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(In open court)

THE COURT: Kindly introduce yourselves.

MR. POWELL: Jeffrey Powell, at the U.S. Attorney's Office, for the government, your Honor.

THE COURT: Good morning, Mr. Powell.

MR. POWELL: Good morning, your Honor.

MS. FRIEDBERG: Anna Frieberg, from Ropes & Gray, on behalf of the plaintiff class.

THE COURT: Good morning, Ms. Frieberg.

MS. FRIEDBERG: Good morning.

MS. KOELEVELD: Celeste Koeleveld, on behalf of the defendants, from the Law Department.

THE COURT: Good morning, Ms. Koeleveld.

MR. LARKIN: Arthur Larkin, for the City of New York, the defendants. Good morning, your Honor.

THE COURT: Good morning, Mr. Larkin.

Thank you. I thank you for responding to my notice of this conference, and good morning to your colleagues and everyone else who is here.

I want to thank and congratulate all of you for the work that it has taken to bring us to this place and set the groundwork for a future of constructive change.

Having said that, I did have some specific concerns about a couple of features of the settlement agreement and of the mechanics for the settlement approval process that I

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1 thought it would be useful to talk about together rather than
2 try to correspond about them.

3 I will start with a small housekeeping issue and then
4 go on to a couple of other issues that are a little bit bigger.
5 The housekeeping issue is this: With respect to the receipt
6 and processing of any objections to the settlement, the notice
7 as currently drafted contemplates that any objections by
8 inmates or others would be addressed to me. I, frankly, don't
9 have the capacity to make sure that something coming into the
10 Court's mail room gets scanned carefully enough to figure out
11 whether the case numbers are referred to somewhere in the body
12 of the letter and it goes off to somebody else's chambers.
13 Typically, what I do in any sort of class objection or opt-out
14 situation is ask that one of the plaintiff's attorney's law
15 firm take responsibility for receiving any objections and then
16 filing all the objections received timely in one lump with an
17 index listing, the names of the objectors, and that is usually
18 done contemporaneously with the advocacy filing that responds
19 to the objections, and then if any were received on an untimely
20 basis, those should be filed separately with a list indicating
21 that they were untimely.

22 Are plaintiff's counsel willing to take on that
23 responsibility?

24 MS. FRIEDBERG: Yes, your Honor. We will revise the
25 notice to have Ropes & Gray do that.

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1 I should just note, though, that with respect to the
2 objections, there is also an obligation under CAFA to notify
3 all of the attorneys for the defendants, to notify all of the
4 attorney generals. They have offered that should the attorney
5 generals have any responses that they would collect those and
6 maintain those, and I assume it will be fine.

7 MR. LARKIN: Yes, your Honor. The defendants will
8 assume responsibility for providing notice to the 50 state
9 attorneys general under the Class Action Fairness Act. And our
10 communications with them, the notice that we provide, will
11 indicate that they should send their objections to us, to the
12 Corporation Counsel's Office. We will take responsibility for
13 that. We will provide copies of any objections that we get
14 both to the Court and to plaintiffs.

15 THE COURT: Very good.

16 Similarly, if you are going to respond to objections
17 by way of advocacy, then that will be included and
18 cross-referenced in your filing in aid of final approval?

19 MR. LARKIN: Yes, your Honor. Absolutely.

20 THE COURT: Thank you.

21 Now, a little more substantively as to the obligations
22 of the parties and the Court under the PLRA; specifically,
23 Title 18, Section 3626. The Court does have to make specific
24 findings with respect to a consent decree of this nature. I
25 see and appreciate the stipulation within the settlement

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1 agreement that all of the requirements of that provision are
2 met, but that's not sufficient to enable the Court to carry out
3 the Court's duties in terms of findings, and so it seemed to me
4 that an appropriate way to address this would be for an
5 official of the Department of Corrections to file, in support
6 of the request for final approval, a declaration or affidavit
7 that would assist the Court in making its determinations. So,
8 for instance, to lay out in, not painful detail, but more
9 detail, the current state of affairs, the relationship between
10 the proposed new measures and measures already in place and
11 measures that are consistent with law enforcement and
12 penological priorities and assuring the Court that the proposed
13 changes and the ways in which those changes are proposed to be
14 made are the least intrusive means of achieving the goals of
15 upholding public safety and the safety and constitutional
16 rights of the inmates.

17 It would also, I think, be helpful and responsive to
18 the statutory concerns for such an affidavit to identify any
19 potential adverse impact on public safety or affirmatively to
20 state that these measures will not have an adverse impact on
21 public safety or the operation of the criminal justice system
22 or perhaps even say these will have a positive impact on public
23 safety and the operation of the criminal justice system.

24 I am sensitive to the defendants' concern about
25 potential use of the settlement agreement or an affidavit in

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1 future litigation, and so I wouldn't be surprised if you were
2 to include some sort of stipulation about limited purpose of
3 the affidavit, but I do need a declaration by someone with
4 knowledge of the system who can assure me that it is
5 appropriate for me to make the findings that I'm required to
6 make by law.

7 Is there any objection to that conceptually, and will
8 you undertake to do that?

9 MS. KOELEVELD: Your Honor, on that issue, looking at
10 your Honor's order, we anticipated this might be one of your
11 concerns. There are other examples that we're aware of of
12 consent decrees that the Department of Justice has entered
13 into, for example, in other cases where the stipulation that we
14 have in the consent decree, that the PLRA findings can be made
15 based on the stipulation. But there are other decrees where
16 that has been sufficient and the Court has made the necessary
17 findings based on the stipulation. So we had anticipated that
18 that would be the basis for the finding, that the stipulation
19 alone would be sufficient, and what I'm hearing you say is that
20 you don't believe that it would be and that you will require
21 more?

22 THE COURT: Yes.

23 MS. KOELEVELD: I hear one way of doing it would be
24 your Honor's proposal of having a Department of Corrections
25 official submit the necessary paperwork. I would like to

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1 discuss it with the plaintiffs and talk it over with them,
2 about what we all would recommend with response to your Honor's
3 suggestion, either we will proceed that way or perhaps an
4 alternative way that would also get the job done. If that
5 would be okay with your Honor, we would like to discuss it with
6 them first.

7 THE COURT: That would be fine. I will look forward
8 to your feedback and either agreement or counter proposal. But
9 on the current record and my understanding of my obligations
10 and my understanding of the law, I do want more to support a
11 finding by the Court.

12 MS. KOELEVELD: Okay.

13 MR. POWELL: Your Honor, just to clarify one point,
14 you're talking about the ultimate final approval; not with
15 respect to the preliminary approval, but with respect to after
16 the fairness hearing and your final approval, you will want
17 some evidentiary submission?

18 THE COURT: Yes. Actually, let's go back to
19 housekeeping for a minute. What I would like to have is, in
20 advance of the fairness hearing, at least a week, preferably
21 two weeks in advance of the fairness hearing, a motion for
22 final approval that would include the supplemental declaration,
23 responses to any objections that have been filed, and any
24 further advocacy that is considered necessary or appropriate to
25 the issue of final approval.

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1 I do note that the factual representations concerning
2 the negotiation process and the involvement of the monitor are
3 covered in the declaration that was submitted, the attorney's
4 declaration that was submitted in support of the preliminary
5 approval motion. I would like to have, with the final approval
6 motion papers, a CV of the monitor, his experiences generally
7 described in the attorney's affidavit, but since I will be
8 approving the appointment as part of approving the settlement,
9 I think a CV or at least an abstract of the high points of his
10 CV would be an appropriate matter to put on the record in that
11 fashion. So when we talk about the projected fairness hearing
12 date, let's build in time for that briefing in advance of the
13 fairness hearing.

14 MR. POWELL: Your Honor, in our proposed order,
15 subject to your Honor's schedule, we had set forth a proposed
16 schedule for a deadline of written objections by September 4th,
17 and then our responses, which certainly will include the items
18 by October 2nd, we were hopeful that we could have a fairness
19 hearing shortly afterwards. As you know and the Court is
20 aware, the government feels that the reforms set forth in the
21 agreement will have a tremendous impact on the safety of
22 inmates, and we want to do everything we can to move the
23 approval process forward and get those reforms implemented as
24 soon as possible.

25 THE COURT: Yes. The 9th could be a little tight

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1 depending on the additional papers filed and the volume of
2 objections, if any. The 16th I'm not available, but we could
3 do it early in the week that follows the 16th. We can do it
4 anytime in that week, I suspect, and we can look at my
5 calendar.

6 Ms. Ng, let me know if there is anything in the week
7 after the 16th that would preclude use of a particular day, and
8 then we can pick a day in that week if that would be acceptable
9 to everyone.

10 MR. LARKIN: That would be the week following
11 October 16th but not that Monday?

12 THE COURT: The week that ends with the 23rd. We
13 could probably do it on the 23rd, or we could do it earlier in
14 that week.

15 MS. FRIEDBERG: I think October 19th is the Monday.

16 THE COURT: I suspect October 19th is the Monday.
17 That would make sense that that week would then end with the
18 23rd. I know that the 16th is the Friday.

19 Shall we aim, say, for Wednesday of that week?

20 MR. POWELL: That's fine, your Honor, October 21st.

21 THE COURT: Can we do October 21st, at 2 in the
22 afternoon?

23 MS. FRIEDBERG: Yes.

24 THE COURT: So the additional filings, including the
25 responses to objections and the filing of the collated

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1 objections, would be on October 2nd.

2 MR. POWELL: Yes, your Honor.

3 THE COURT: I wanted to check with you on two
4 analytical matters that I don't think are specifically
5 addressed in the preliminary approval brief. One is whether
6 the termination of relief restrictions in subsection (b) of
7 3626(b), which deal with prospective relief, would apply to a
8 consent decree, or whether a consent decree only needs to
9 comply with the findings provisions of subsection (a) of the
10 statute.

11 MR. POWELL: I think our view, the government's view,
12 is that the applicable standard for approving the consent
13 decree that is being entered is set forth in 3626(a)(1) that
14 needs narrowness and intrusiveness kind of three-prong test.
15 Our understanding is Section (b) deals with instances where a
16 party might want to terminate existing relief and the types of
17 findings that need to be made to justify continuing a consent
18 decree, so after one is already in place, I believe.

19 THE COURT: And so you don't believe that an order, be
20 it a consent decree or otherwise, incorporating prospective
21 relief needs specifically to address the timing and mechanisms
22 that are set out in (b); that those could simply be invoked not
23 withstanding, for instance, the provisions of this proposed
24 consent decree that provide that it would not be terminable
25 unless there have been two years of full compliance as attested

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1 to by the monitor?

2 MR. POWELL: There is a termination provision that
3 your Honor is referring to in the agreement, our view is that
4 would be the applicable termination provision; that I think as
5 far as findings for the Court in approving the settlement, I
6 think it is 3626(a)(1). 3626(b) deals with the other instances
7 where parties coming in to terminate an existing consent decree
8 that might be silent to a termination provision.

9 THE COURT: I am sure that I didn't ask my question
10 clearly enough.

11 So is it your belief that the provision in the consent
12 decree with regard to timing and mechanisms for termination
13 would supersede the statutory provisions in 3626(b), or that
14 the 3626(b) mechanisms don't apply to a consent decree as
15 opposed to some other sort of imposed order for prospective
16 relief, or (c) that 3626(b) could still be invoked by a party
17 or intervenor notwithstanding the termination provision in the
18 consent decree?

19 MR. POWELL: The government's view is I think we first
20 indicated option (a) is that the agreed-upon termination
21 provision in the consent judgment would govern and supersedes
22 any other potential form of terminating the relief in the
23 statute, that that is a negotiated provision, and the agreement
24 would terminate if the conditions set forth in the agreement
25 are met.

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1 MS. KOELEVELD: Your Honor.

2 THE COURT: Ms. Koeleveld.

3 MS. KOELEVELD: Yes. The City's position is that it
4 is possibly option (c) that applies of the three that your
5 Honor just listed.

6 THE COURT: I forget how I set them out.

7 MS. KOELEVELD: Option C was -- and I believe this was
8 potentially an open question -- but that the termination
9 provisions of 1326(b) of a party or a non-party to terminate
10 the decree at some point, that those are not erased or
11 superseded or completely eliminated by the termination
12 provision in the, agreement.

13 THE COURT: I do note that (b) doesn't include any
14 qualifier such as unless otherwise ordered by the court. I
15 thought that the parties' positions might have to do with some
16 construction of the words in which prospective relief is
17 ordered and some distinction of prospective relief from the
18 provisions of the consent decree. In order for me to make my
19 fairness determination, I think it will be appropriate for the
20 precis of final approval to address the parties' positions with
21 respect to the relationship between the consent decree's
22 termination provision and subsection (b), whether if it is not
23 applicable or that it still could be invoked or that it will be
24 overridden, and I will take those positions into account in
25 making my ultimate fairness determination. The uncertainty

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1 doesn't give me pause about preliminary approval, but I do need
2 to be able to understand more thoroughly the positions of the
3 parties, particularly if they differ, and this will also be an
4 appropriate occasion for you to talk about your respective
5 positions since they do appear to differ at this point.

6 Is it your understanding that the monitoring
7 provisions of the agreement are not covered by the special
8 master provisions of 3626(f)?

9 MR. POWELL: I think our view is that that is an
10 option for a Court in this type of agreement to appoint a
11 special master, but as the provision says, the Court may
12 appoint a special master, but it is not required here. We have
13 agreed to an independent outside monitor, and we wouldn't see a
14 need, at least from our perspective, to appoint a special
15 master at least at this point.

16 THE COURT: To put it another way, it is your view
17 that because the responsibilities and the authority assigned to
18 the monitor under the consent decree are not within the scope
19 of the sorts of responsibilities and authority of a special
20 master as described in 3626(f), the monitor position should not
21 be construed as a special master provision that's subject to
22 that subsection of the statute?

23 MR. POWELL: I think our view is that the roles and
24 responsibility of the independent court monitor are as they are
25 set forth in the agreement, and that defines his role, the

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1 scope of his authority, and his responsibilities, and it is a
2 different beast than a special master, and we don't see the
3 need for a special master given we have an appointed monitor.
4 I will defer to the City, but that is our view.

5 MR. LARKIN: Your Honor, I believe what Mr. Powell
6 just said is correct under the case law that interprets and
7 applies to the PLRA, but we will take a fresh look at it before
8 we submit papers, and if your Honor permits, we will address
9 that issue in the papers, as well.

10 THE COURT: I would be grateful. To be clear, I'm not
11 suggesting that there is a need for an appointment of a special
12 master as described in 3626(f) in addition to or instead of the
13 monitor, but in complying with the Court's responsibility to
14 ensure that all mandatory provisions of 3626 are complied with,
15 it is necessary for the Court to have thought through whether
16 the monitor is somehow a special master and for the parties to
17 address that issue, that the applicability or not of 3626(f) in
18 the final submissions would be helpful in closing that loop.

19 MR. POWELL: We're happy to do that. It is our
20 understanding when the Department of Justice has entered many
21 of these types of agreements, consent judgments with different
22 entities and locations and municipalities, that typically if
23 there is a monitor, my understanding is there is not an
24 additional person who is a special master, but we will confer
25 with them again and address that point in any submission.

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1 THE COURT: Thank you.

2 The statute doesn't seem to me to require a special
3 master under any circumstances. It is just whether those
4 requirements would somehow superimpose themselves on the
5 appointment and tenure of the monitor. A logical answer to
6 that at this point without having fully done the research would
7 seem to me to be that no, it doesn't superimpose, but that's a
8 portion of the analytical loop that still needs to be closed,
9 and I would be grateful for your help with that.

10 Now, the final set of questions that I have, have to
11 do with the expansion of the certified class. It is sort of
12 two or three sets of concerns. One is I would like to confirm
13 my understanding of which facilities are currently covered by
14 consent decrees and how you propose mechanically to get the
15 other consent decrees withdrawn or modified since at least a
16 couple of them are in close cases that are currently on the
17 books of the court assigned to judges that have passed on. Do
18 we need to get those reopened and reassigned? Were you
19 planning to make applications to the judges for a conditional
20 modification so that if this agreement gets final approval,
21 then those would automatically drop back or whether that is
22 something that you intended to do after the final approval
23 here. And I did my best to match up the agreements that were
24 identified to the facilities named, and I wasn't entirely
25 successful on that one. I saw a consent decree in Reynolds v.

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1 Ward that specifically deals with the Bellevue prison ward. I
2 didn't see anything dealing specifically with Elmhurst.

3 MR. CHASAN: Reynolds deals with both Bellevue and
4 Elmhurst, but it is not part of this case.

5 MS. FRIEDBERG: Your Honor, I'm happy to give you
6 background to help explain this, and I am going to rely on the
7 City, who has actually been working with us, to sort of fold in
8 another matter that is not directly related to Nunez but
9 tangentially involved, and that is that the way the class was
10 defined in this case was, for all intents and purposes, all
11 facilities that are managed by the New York City Department of
12 Corrections with the exception of three: Eric M. Taylor, which
13 is governed by consent decree under the lawsuit Fisher v.
14 Koehler. We have two additional facilities, both Bellevue and
15 Elmhurst. Those were excluded from this lawsuit as a result of
16 other cases such as Reynolds v. Ward. The expansion of the
17 class definition does not contemplate including Bellevue or
18 Elmhurst into the class. It only contemplates adding in Eric
19 M. Taylor. The process upon which we are going to work through
20 this -- as you noted, the case Fisher v. Koehler is quite old
21 and in fact we think probably has now been assigned to Judge
22 Preska -- but while we're still negotiating with the City -- I
23 shouldn't say "we" -- my colleagues at Legal Aid who are
24 counsel in Fisher are negotiating how they will reach out to
25 Judge Preska, but my understanding is they will reach out to

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1 her by letter once we receive preliminary approval on this
2 agreement, and that portions of the consent decree in Fisher
3 that sort of overlap with what is in Nunez would ultimately be
4 sidelined or I guess omitted from that consent decree to allow
5 Nunez to govern. However, the issues in Fisher v. Koehler that
6 are not specifically addressed in this case would remain active
7 in the Fisher v. Koehler lawsuit.

8 THE COURT: In our ECF system, that is still shown as
9 assigned to Judge Lasker and Magistrate Judge Bernikow.

10 MS. FRIEDBERG: We noticed the same thing last week.
11 Our anticipation is probably that it would go to Judge Preska
12 on an initial basis.

13 THE COURT: Yes. I think Judge Preska is the safety
14 net for all orphaned cases, and then sometimes they're rolled
15 out to another judge.

16 Is Sheppard v. Phoenix the case dealing with the
17 central -- actually, the central punitive segregation unit
18 stipulation seems to have been terminated in 2002.

19 MS. FRIEDBERG: It was, correct. Sheppard was the
20 precursor to the lawsuit here today.

21 THE COURT: Thank you for reassuring me that you
22 already have that in hand as part of the game plan here.

23 All right. So, then, we go to the scope of the
24 release. The expanded class includes not only present but all
25 future inmates in these facilities, and the release provision

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1 precludes, it seems to me, any applications for systemic relief
2 by future inmates as well as current inmates. It is written in
3 terms of such relief based on the facts and circumstances
4 alleged in the second amended class action complaint, which
5 does seem to be confined to excessive force type conditions of
6 confinement claims.

7 Am I correct that that is the parties' intention with
8 respect to limitations of future impact litigation concerning
9 the city jails, that it would be in relation to excessive force
10 claims?

11 MS. FRIEDBERG: Correct. That is a very shorthanded
12 way, but that is plaintiffs' counsel's intention.

13 MR. LARKIN: That is our view, as well. I think the
14 second amended complaint includes many categories of
15 allegations, but they all relate to the use of force. There
16 are allegations on training investigations, etc., but
17 ultimately the constitutional violation alleged is the use of
18 excessive force by staff against inmates.

19 THE COURT: Thank you.

20 And although there is a provision for termination of
21 the agreement and of the monitoring, I don't see any specific
22 provision addressing termination of the debarment of future
23 inmates from impact litigation even concerning excessive force
24 issues, and so I would be grateful if you could explain to me
25 how the agreement is expected to work in terms of the release

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1 and prohibitions as to future inmates.

2 MR. LARKIN: Your Honor, I think briefly, if I
3 understand your Honor's question, the agreement will include
4 prospective relief, and inmates who are admitted to the jails
5 will be part of the class and will benefit from the prospect of
6 release. Those inmates during the term in which prospective
7 release is in force will not be able to bring lawsuits against
8 the Department of Corrections seeking equitable relief for
9 excessive force. Once prospective relief terminates, though,
10 future inmates won't be bound by this release because the
11 release is based on claims that were asserted in the second
12 amended complaint, and those claims are for alleged
13 constitutional violations that occurred during a certain period
14 of time. So once prospective relief expires or is terminated
15 under this agreement, if a future inmate believes that he or
16 she has been subjected to excessive force and believes that
17 another class action is necessary, then that future inmate
18 would not be barred from bringing a new class action based on
19 new factual allegations arising after prospective relief
20 terminates.

21 THE COURT: So is prospective relief understood to
22 terminate at the time that two years of compliance with the new
23 measures is certified and the monitoring is terminated, or in
24 some other way?

25 MR. LARKIN: It could be the former, or as

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1 Ms. Koeleveld mentioned, it could be the latter, and we're
2 going to look closely at the case law once again regarding
3 3626(b). But however prospective relief terminates, once it is
4 terminated and once the monitoring terminates, at that point, a
5 future inmate would not be bound by this release and could
6 bring an action on behalf of a new class.

7 MS. FRIEDBERG: Your Honor, plaintiffs' counsel has
8 the same view, that once the agreement is terminated, while
9 sort of bracketing the issue of how the agreement gets
10 terminated, either under the provisions of the agreement or
11 perhaps under the statute, ultimately once the agreement is
12 terminated, our position is then the release, too, would end.
13 It would be part and parcel with the termination of the
14 agreement.

15 THE COURT: So I ask you to think about clarifying
16 that, the provision in Section XXIII certainly doesn't say that
17 in explicit terms and seems to read more broadly. It says, as
18 of the effective date, all members of the plaintiff class,
19 which would of course include future inmates, hereby release
20 and waive any and all claims for and all rights to pursue,
21 initiate, prosecute, or commence any and all causes of action
22 for class-wide injunctive and declaratory relief based on the
23 claims that were asserted in the second amended complaint. The
24 second amended complaint deals with the past history of issues
25 and noncompliance and past efforts and allegations of

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1 noncompliance with past court orders. It doesn't seem
2 inherently limited in time to incidents or practices occurring
3 within a particular time frame. So it may be as simple as an
4 agreement that when the future claims are released for any
5 period during which the agreement, the consent decree remains
6 in effect or something like that, but I don't see that sort of
7 limitation in the document at this point, and that does give me
8 concern in terms of approval of the document as written, final
9 approval of the document as written, is fair.

10 MS. FRIEDBERG: Sure. Your Honor, just to maybe help
11 assuage your mind here, I wanted to direct you to the class
12 notice where we do give a short summary of the release and the
13 effect of it on page 3 of the notice, paragraph 3. It
14 essentially articulates what Mr. Larkin and I just described in
15 terms of the length of time upon which the release lasts. And
16 so while I agree that for final approval we may want to review
17 the release and make sure the agreement itself is clear, I
18 think at least for the purposes of providing notice to the
19 class, the description here is consistent with what we've
20 described and hopefully what you would feel comfortable with in
21 terms of an agreement on the longevity of the release.

22 THE COURT: Thank you. I do see that explanation, and
23 the notice is consistent with what I have been told here, and
24 that does help.

25 I see a typo in the bullet just above that on page 3.

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1 It talks about provisions addressing "yong," Y-O-N-G, inmates.

2 MS. FRIEDBERG: Thank you, your Honor. We will make
3 that change.

4 THE COURT: All right, then. So those were the issues
5 that I wanted you to look back on and address or supplement.

6 Is there anything else that you wanted to bring up
7 with the Court today?

8 MR. POWELL: On that last issue, just before we move
9 on, I think there would probably be an extra sentence in the
10 release provision of the settlement agreement. Are you fine
11 with us at the time of final approval with our submission on
12 October 2nd including that revised language, or do you want a
13 new revised settlement submitted before that with that
14 sentence?

15 THE COURT: In the event of the final approval or
16 together with the final approval application will be fine, and
17 I will need, of course, a revised version of the proposed order
18 preliminarily approving the consent judgment.

19 MS. FRIEDBERG: I was going to propose giving you a
20 new one.

21 THE COURT: Yes, that would be helpful. I think the
22 dates here remain the same except that we would put in the
23 October 21st date for the hearing.

24 MS. FRIEDBERG: Your Honor, I did identify one typo on
25 page 2 of the proposed preliminary order in the first full

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1 paragraph. We had a reference to my declaration, and it just
2 said dated June, underscore, and it should say July 1, 2015.

3 THE COURT: All right. Actually, if you would just
4 file an updated proposed order with the tweak to the notices,
5 as well, that would be great.

6 MS. FRIEDBERG: Great.

7 THE COURT: And we've agreed that the hearing date is
8 the 21st, and the submissions are for the 2nd of October, and
9 you'll get back to me in the interim about the form of
10 submission dealing with the 3626(a) certification of
11 consistency with law enforcement or penological consideration.

12 All right, then. I thank you all very much, and I
13 look forward to the submissions, to the fairness hearing in the
14 fall, and to your communications in the interim.

15 I wish you all well.

16 ALL: Thank you.

17 (Adjourned)